UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	Chang et al.	Group No.	1642
Serial No.:	10/712,359	Examiner:	Davis, Minh Tam B
Filed:	November 13, 2003	Conf. No.	1306
For:	DOMINANT NEGATIVE VARIANTS OF METHIONINE AMINOPEPTIDASE 2 (MetAP2) AND CLINICAL USES THEREOF		

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

TO THE ASSISTANT COMMISSIONER FOR PATENTS,

SIR:

This letter is in response to the Office action dated September 25, 2006, in which an election between the following groups of claims for prosecution on the merits was requested: Group I (Examiners Group I-8), claims 1-8, 19-20, drawn to a method of modulated cell proliferation using a variant of MetAP2 polypeptide, and Group II (Examiners Group 9-20), claims 1-18, drawn to a method of for modulating cell proliferation using a polynucleotide encoding a variant of MetAP2 polypeptide. Applicant requests withdrawal of restriction requirement and elects for prosecution of Group II, claims 9-18 and with species SEQ ID NO. 6.

According to 35 U.S.C. §121, a restriction is proper only if there are at least two independent and distinct inventions. Furthermore, "[I]f the search and examination of

an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."[1]

In this case, restriction is not proper because a search and examination of the entire application can be made without placing undue burden on the Examiner. The practice of inventions in Group II inherently result in the practice of a common element of Group I, the common element being the polypeptide that can be utilized to modulate cell proliferation. Therefore any search of the prior art and examination of the claims of Group II will necessarily co-extend with the search and examination of the claims of Group I. The Examiner, however, states that examination of each combination of MetAP2 polypeptide with each translation domain constitutes a separate invention. However, each MetAP2 polypeptide or translation domain sequence need only be searched separately. Moreover, all polypeptides disclosed in the application are variants of MetAP2 or translational domains and thus sufficiently similar that it would be necessary to examine the same sequences regardless of the species elected. In addition, the prior art regarding nucleotide and polypeptide sequences that participate in a method of modulated cell proliferation using a MetAP2 variant is sufficiently sparse, and sufficiently cross-referenced, to allow the search and examination of these claims without undue burden.

The Examiner has made no showing that a search and examination of the prior art in this technical area would be an undue burden or that the inventions disclosed are distinct. Without this showing, the Office has not established a *prima facie* case for restriction under 35 U.S.C. § 121. As such, the examination of the entire application

[1] MPEP § 803 (emphasis added).

may be made without serious burden, and the claims of Groups I, and Group II should be rejoined and examined together as specifically dictated by MPEP § 803.

Applicants, subject to the foregoing traverse, hereby elect to prosecute the claims of Group II, drawn to method of using polynucleotides, vectors, and host cells. Applicants elect the species as recited in claim 15 of SEQ ID NO: 6. Claims within Group II, which read on species SEQ ID NO, include claims 9, 10, 11, 12, 13, 14, 15, and 18.

Applicants reserve the right to file divisional applications directed to the subject matter of the non-elected claims.

The Commissioner is authorized to charge any fees that might be due to Deposit Account No. 50-1662.

Respectfully submitted,

POLSINELLI SHALTON WELTE SUELTHAUS PC

Date: January 10, 2007

By: /Kathryn J. Doty/
Kathryn J. Doty, Reg. No. 40,593
100 South Fourth Street, Suite 1100
St. Louis, Missouri 63102
Tel: (314) 889-8000
Fax: (314) 231-1776
Attorney for Applicants